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Ref/Room 222
Secretary
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DISPATCHED BY

Ray C. Bursey Jr., President
B & H Broadcasting Systems, Inc.
3720 County Avenue
Texarkana, Arkansas 71854

Dear Mr. Bursey:

This is in response to the petition for rule making you filed with the Commission on March 16, 1998, proposing the substitution of Channel 245C1 for Channel 278C2 at New Boston, Texas, and modification of the license for Station KZRB to reflect operation on the new channel. To accommodate the substitution in New Boston, you request changes at Idabel, Oklahoma, Pittsburg, Texas, and Nashville, Arkansas.

We have reviewed your proposal for New Boston, Texas, and find that it is unacceptable for consideration. A staff engineering analysis indicates that Channel 245C1 at New Boston is short spaced to Station KBEL, Idabel, Oklahoma, on Channel 244C3. Although you have proposed the substitution of Channel 278C2 for Channel 244C3 at Idabel to remove the conflict, our analysis indicates that Channel 278C2 is short spaced to the allotment of Channel 279C1 at Wilburton, Oklahoma, for which there are two applications pending. The window for Channel 279C1 at Wilburton opened on July 23, 1996, and closed on August 26, 1996, and both applications were timely filed (BPH-960826MB and BPH-960826MQ). You did not acknowledge the applications or provide any solution to the short spacing. Further, you neglected to state your willingness to reimburse Station KBEL in accordance with *Circleville and Columbus, Ohio*, 8 FCC 2d 159 (1967), for the reasonable costs of changing its frequency. You should be aware that Commission policy does not provide for the forced upgrade of a station to accommodate another station's desire to upgrade or relocate its transmitter. In this situation, your petition for rule making would need to include a written statement from Station KBEL agreeing to the upgrade.

Channel 245C1 at New Boston is also in conflict with Channel 245A at Pittsburg, Texas. The window for filing applications for Channel 245A at Pittsburg opened on April 2, 1996 and closed on May 7, 1996, and there are two applications on file for the channel. Here you have proposed the substitution of Channel 270C3 for Channel 245A at Pittsburg, but your engineering analysis failed to consider the applications which were filed prior to receipt of your petition. Channel 245C1 is also short spaced to Channel 245A, Nashville, Arkansas, for which two applications are pending (BPH-970820MD and BPH-970821MG). To

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avoid this conflict you suggest the substitution of Channel 295A for Channel 245A at Nashville. We note that your proposed site for Channel 295A at Nashville is short spaced to Channel 295A at Gurdon, Arkansas, in MM Docket No. 98-40. See 13 FCC Rcd 6419 (1998), *Report and Order* adopted June 17, 1998, DA No. 98-1200. Here you did not make a showing that Channel 245A would work at the applicant's selected sites or at the vacant allotment site for Channel 295A.

Based on the above discussion, we are returning your petition for New Boston, Texas. Your petition is unacceptable for numerous reasons. You propose to upgrade a facility without its permission, you did not provide a reimbursement pledge for Station KBEL, and your engineering analysis does not consider applications that have cut-off protection.

Sincerely,

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau